

***United States Court of Appeals
for the Second Circuit***



APPENDIX

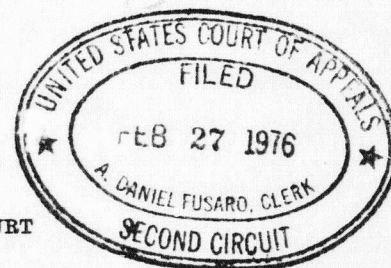
76-5001

United States Court of Appeals
FOR THE SECOND CIRCUIT

Docket No. 76-5001

IN THE MATTER
of
MEDICAL ANALYTICS,
Debtor.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK



JOINT APPENDIX

LANS FEINBERG & COHEN
555 Madison Avenue
New York, N. Y. 10022
Tel. No. (212) 421-0700
Attorneys for Appellant

PAGINATION AS IN ORIGINAL COPY

Table of Contents

	Page
Relevant Docket Entries	
Bankruptcy Court's Proceeding	A-1
District Court	A-3
Notice of Motion to Reject Discharge in Bankruptcy on grounds of Fraud	A-5
Verified Petition of Medical Analytics	A-7
Affidavit of Robert B. Abel	A-11
Notice of Cross-Motion to Dismiss Petition of Medical Analytics, Inc.	A-43
Verified Answer of MetPath, Inc.	A-45
Affidavit of Robert A. Burns	A-49
Order of Edward J. Ryan, Bankruptcy Judge	A-54
Notice of Appeal to the District Court	A-56
Memorandum and Order of Judge William E. Conner	A-57
Notice of Appeal to the Court of Appeals	A-61

DATE	PROCEEDINGS
40) 8/14/74	Order signed (JJG) directing payment to claims filed pursuant to section 355 and further directing distributor to make payments to referee salary and expense fund. Copy sent to distributor.
8/21/74	Motion to restore claims (Coulter)----- withdrawn.
8/26/74	Adj. objs. claims. proc. & adj. to 9/4 at 11:30
9/4/74	Adj. objection to claims Proc. & Adj to 10/9/74 at 10:00.
10/9/74	Adj. objections to claims Proc. & Adj to 11/4/74 at 10:00.
11/4/74	Adj. objections to claims-Marked off.
41) 11/8/74	Order signed fixing claims 246 filed by Joseph Dorfman and claim 251 filed by Milton Cohen. Copy mailed to distributor.
12/12/74	Filed Notice of Motion with affidavit of service. Re:To reject discharge in bankruptcy upon ground of fraud. Ret:12/16/74 at 10:00.
12/16/74	Revoke discharge Proc. & Adj to 2/5/75 at 10:00.
2/5/75	Adj. revoke discharge Proc. & Adj to 3/5/75 at 10:00.
3/5/75	Adj. revoke discharge Proc. & Adj to 4/7/75 at 10:00.
4/4/75	Filed Notice of Cross-Motion with affidavit of service. Re:Dismissing the petition of debtor with costs to Metpath, Inc. Ret:4/7/75 at 10:00.
4/4/75	Filed Metpath's Inc's memorandum of law in support of its motion to dismiss debtor's petition.
4/7/75	Adj. revoke discharge, Cross-Motion Proc. & Adj to 5/7/75 at 9:30.
5/7/75	Adj. revoke discharge (also 6/9-2:15 for trial) Proc. and closed. Motion to dismiss granted.

FPI MI-4-18-72-75M-7551

DATE	PROCEEDINGS
5/16/75	Filed by attorneys for Metpath Inc answer memorandum of law in support of its motion to dismiss debtor's petition.
5/16/75	Order signed dismissing the petition of Medical Analytics, Inc, etc. (Submitted by attorneys for Metpath, Inc).
5/16/75	Filed memorandum of law of debtor in opposition to Metpath Inc's motion to dismiss the petition.
5/16/75	Filed unsigned counter order submitted by attorneys for debtor denying the motion to dismiss petition, etc. Copy of signed order mailed to Lans Feinberg and Cohen, attorneys for debtor.
5/23/75	Filed Notice of Appeal by attorneys for Medical Analytics, Inc. Re:Order of May 16, 1975.Paid \$15.00 to Clerk of Court. Receipt #52101.
5/23/75	Sent copies of notice of appeal to interested parties: Raymond Rose c/o Metpath, Inc; Louis Rosenberg Esq, attorney for DIP; Marshall, Bratter, Greene, Allison and Tucker, attorneys for Metpath, Inc and Fisher, Hacht, and Fisher, Attorneys for Creditors.

NAME OF BANKRUPT/DEBTOR INDIVIDUAL ASSIGNMENT, INC.		DIST. NO. DIV. NO. 200	DOCKET NO. 73 B 202
ADDRESS OF BANKRUPT/DEBTOR (Number and Street) 75 South Main Street, N.Y.		CHAPTER OR SECTION 11-321	CHECK IF <input checked="" type="checkbox"/> Voluntary <input type="checkbox"/> Involuntary
CITY Brooklyn		DATE PETITION FILED 3-6-73	<input checked="" type="checkbox"/> Fee paid in installments
ZONE Eastern		DATE CLOSED	<input checked="" type="checkbox"/> Corporation
COUNTY Kings		DISCHARGE <input checked="" type="checkbox"/> Granted <input type="checkbox"/> Denied	OCCUPATION <input type="checkbox"/> Farmer <input type="checkbox"/> Employee
STATE NY		DATE DISCHARGED	(Check one) <input type="checkbox"/> Professional <input type="checkbox"/> Other (Non business)
NO ASSET CASES ONLY CLAIMS AS SCHEDULED <input checked="" type="checkbox"/>		TOTAL \$	PRIORITY \$
ATTORNEY FOR BANKRUPT OR DEBTOR Louis P. Rosenberg, 26 Court St., Brooklyn, NY 11201		SECURED \$	UNSECURED \$
ATTORNEY FOR PETITIONING CREDITORS		NAME OF JUDGE Edward J. Ryan	
RECEIVER		NAME OF REFEREE	
ATTORNEY FOR RECEIVER		CHAPTER UNDER WHICH CASE WAS PENDING WHEN DISMISSED	
TRUSTEE		DISMISSED? <input type="checkbox"/> YES <input type="checkbox"/> NO	
ATTORNEY FOR TRUSTEE		NAME OF REFEREE	
CHANGES OF PRINCIPALS			
DATE	PROCEEDINGS		
3-6-73	Filed petition, Statement as to Executory Contracts, List of Creditors, Affidavit under Rule XI-2-referred to Referee Ryan, R.		
3/8/73	Filed Petition and Certified copy of Referee's order authorizing Debtor in Possession to operate business, etc. Dated: 3/6/73		
3-30-73	Filed schedules and statement of affairs. Copies sent to Referee.		
6-7-73	Filed certificate of Referee pursuant to Rule XI-10, dated 6-1-73.		
11/9/73	Received from Referee COPY of Plan of Arrangement, Dated: 11/7/73.		

CONTINUED ON PAGE 2

FORM BK 74
SEP. 1962

UNITED STATES DISTRICT COURTS
BANKRUPTCY DOCKET - COPY

☒ FX

CHECK THIS BOX IF FILING FEES WERE PAID IN FULL AT TIME OF FILING

- 6/17/75 Filed NOTICE OF APPEAL to District Court, for the Southern District of New York, from hte Order of the Bankruptcy Judge entered in this case on May 16, 1975, denying the motion of Midical Analytics, Inc. Ret: JULY 29th, 1975 at 10:30 A.M. in room 506. Sub By; LANS FEINBERG & FOHEN, attys for the Petitioner/Appellant.f.
- 6/17/75 Filed DESIGNATION OF CONTENTS, of record on appeal and statement of issues. Sub By: Lans Feinberg & Cohen, Dated May 30, 1975. f. BROWN FOLDER TO BE RETURNED.
- 7/3/75 Filed BRIEF ON BEHALF OF APPELLANT, Medical Analytics, Inc. Sub By: Lans, Feinberg & Cohen. f.
- 7/17/75 Filed BRIEF ON BEHALF OF RESPONDENT, Metpath Inc. Sub By. Marshall, Bratter, Greene. Allison & Tucker. f.
- 7/22/75 Filed REPLY BRIEF on behalf of appellant, Midical Analytics, Inc.f.
- 12/1/75 Filed MEMORANUDM DECISION #43452, This ds an appeal from an order of Bank Judge Ryan, dated 5/16/75. The order of Judge Ryan dismissing the petition is affirmed. So ordered Conner, J. dated 12/1/75. Copy to Bank Judge. M/N: Lans feinberg & Cohen 555 Madison Ave, N.Y.N.Y., Raymond Rose c/o MetPath Inc. 60 Commerce Way, Hackensack, N.J. 07606., Louts Rosenberg 16 Court St. Brooklyn, N.Y. Marshall Bratter Greene Allison & Tucker. 430 Park Avenue N.Y.N.Y. Fisher Hacht & Fisher, 200 Park Ave South N.Y.N.W. Judge Ryan 40 Center St. Rm 238.
- 12/31/75 Filed NOTICE OF APPEAL of Medical Analytics, Inc., to the USCA from the annexed order of the Hon. Judge Conner entered 12/1/75. f.
- 2/9/76 Filed Notice of Original Record being transferred to the USCA.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - x

In the Matter

of

73 B 222

MEDICAL ANALYTICS, INC.,

Debtor.

NOTICE OF MOTION TO REJECT
DISCHARGE IN BANKRUPTCY UPON
GROUND OF FRAUD

- - - - - x

SIRS:

TAKE NOTICE, that upon the petition verified December ~~4~~, 1974, the affidavit of ROBERT ABEL, sworn to December ~~4~~, 1974 and the Exhibits annexed hereto, the debtor, MEDICAL ANALYTICS, INC., will move this Court before the Honorable EDWARD J. RYAN for an order pursuant to Title 11 U.S.C. 33, on December 16, 1974 at 10:00 A.M.

(a) Setting aside the confirmation and discharge heretofore made in connection with said debtor, upon the grounds that a fraud was perpetrated by Raymond Rose, the prior President of Medical Analytics, Inc. and Metpath, Inc., the purchaser of substantially all of the assets of Medical Analytics, Inc., in the procurement of the order confirming an arrangement in bankruptcy pursuant to the provisions of Chapter XI and that the discharge was granted premised upon such fraud, and that had this Court had knowledge of the true facts, such discharge would not have been made and

(b) Revoking the approval heretofore given of the agreement made between Metpath, Inc. and Medical Analytics, Inc. rescinding said agreement, and directing a bona fide sale of the assets fraudulently purchased by Metpath, Inc. and applying the proceeds thereof in favor of the creditors.

(c) That the compensation of LANS FEINBERG & COHEN as attorneys for the Debtor in connection with this application and all further proceedings be determined and that they be reimbursed for their reasonable expenses.

Dated: New York, New York
December 4, 1974

YOURS, ETC.

LANS FEINBERG & COHEN

By 

A Member of the Firm

Attorneys for MEDICAL ANALYTICS, INC.
555 Madison Avenue
New York, N. Y. 10022
(212) 421-0700

TO:

RAYMOND ROSE

LOUIS ROSENBERG, ESQ. . 44-5-6840
Attorney for Debtor
in Bankruptcy

METPATH, INC.

MESSRS. FISHER, HECHT - 50-7-5222
& FISHER
Attorneys for Creditors

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - x

In the Matter

of

73 B 222

MEDICAL ANALYTICS, INC.,

PETITION

Debtor.

- - - - - x

TO THE HONORABLE EDWARD J. RYAN,
Referee in Bankruptcy:

The Petition of Medical Analytics, Inc., by its counsel,
Messrs LANS FEINBERG & COHEN, respectfully alleges as follows:

1. That Medical Analytics, Inc. filed a petition under Chapter XI of the Bankruptcy Act on May 6, 1973 and was discharged on May 2, 1974 (subject to the reservation by the Court of jurisdiction for certain purposes). For purposes of convenience, Medical Analytics, Inc. is hereinafter referred to as the "Petitioner" and/or "Debtor".
2. That in connection with the discharge and a plan of arrangement there was a fraud perpetrated on the bankrupt by Raymond Rose and Metpath, Inc. (hereinafter "Metpath") and that petitioner has only recently had knowledge thereof and had the true facts been known the discharge would not have been granted.
3. That the acts of fraud consisted, among other things, of the following:
 - a. That Raymond Rose and Metpath falsely and fraudulently stated that the proceeds from the sale of certain assets to MetPath which sale was approved by this Court was sufficient to meet the plan of arrangement approved by this Court;

b. That Raymond Rose, the prior President of the Petitioner and MetPath at the time they proposed and recommended to the interested parties a sale of the Petitioner's principal asset to MetPath, fraudulently and deceitfully failed to advise this Court or Petitioner's creditors or shareholders that they had made an arrangement whereby Mr. Rose was, at or about that time, employed by MetPath at a substantial salary plus other emoluments;

c. That Raymond Rose and MetPath falsely and fraudulently stated that Petitioner would be a viable entity after this discharge.

4. That upon information and belief, the fraud set forth above was known by Raymond Rose, the Petitioner's former President, and by MetPath to be fraudulent; were made with the intent to deceive this Court and the Petitioner's creditors and shareholders in order that Mr. Rose and MetPath may profit thereby; and that had this Court and Petitioner's creditors and shareholders known the true facts the discharge would not have been made and the plan not have been approved.

5. That the Petitioner upon learning the true facts moved diligently and was free from laches. Petitioner only learned the full extent of the misrepresentations in or about September, 1974 and thereafter and until this time has attempted to resolve the claims set forth herein amicably.

6. That the paragraphs of the accompanying affidavit and exhibits are adopted in this Petition as if set forth herein at length.


WHEREFORE, Petitioner requests that the discharge in bankruptcy heretofore granted in favor of the Petitioner be rejected, and

that the agreement between MetPath and the Petitioner be rescinded and that the Court direct a bona fide sale of the assets fraudulently purchased by MetPath and apply the proceeds thereof in favor of the creditors.

Dated: New York, N. Y.
December 4, 1974.

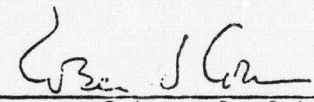
MEDICAL ANALYTICS, INC.

By


Robert B. Abel, President
Petitioner

LANS FEINBERG & COHEN

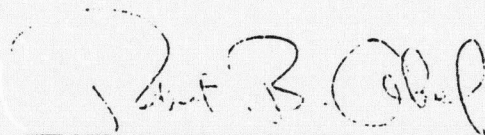
By


Robert S. Cohen
A Member of the Firm

Attorneys for Petitioner
555 Madison Avenue
New York, N. Y. 10022
(212) 421-0700

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS.:

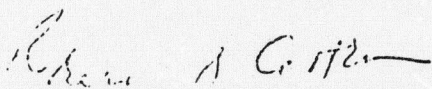
ROBERT B. ABEL, being duly sworn, deposes and says that deponent is the President of MEDICAL ANALYTICS, INC., the corporation named in the within action; that deponent has read the foregoing Petition and knows the contents thereof; and that the same is true to deponent's own knowledge except as to the matters therein stated to be alleged upon information and belief, and as to those matters deponent believes it to be true. This verification is made by deponent because MEDICAL ANALYTICS, INC. is a corporation. Deponent is an officer thereof, to wit, its President.



ROBERT B. ABEL

Sworn to before me this

4th day of December, 1974.



ROBERT S. COHEN
NOTARY PUBLIC, State of New York
No. 31-0001003
Qualified in New York County
Commission expires March 30, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - x

In the Matter
of
MEDICAL ANALYTICS, INC.,
Debtor.

73 B 222

AFFIDAVIT

- - - - - x

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS.:

ROBERT B. ABEL, being duly sworn, says:

1. I am presently the President of Medical Analytics, Inc. (hereinafter "Medical Analytics") and a director thereof. I became a director on or about March 28, 1973 and President on or about April 11, 1974. I submit this affidavit and the Petition annexed hereto in support of the accompanying motion which seeks inter alia a revocation of the discharge in bankruptcy heretofore granted Medical Analytics.

2. By an order confirming an arrangement in bankruptcy (Ryan, J.), this Court, on May 2, 1974, approved a Plan of Arrangement that discharges the bankrupt. The order and plan are annexed as Exhibit "A". The Court retained jurisdiction of certain claims (Par. 17).

3. The plan itself was funded by MetPath, Inc. (hereinafter referred to as "MetPath"), which purchased Medical Analytics' principal assets, its National Reference Laboratory. The proceeds of the purchase were to be placed in a special account to meet the payments under the plan. Approximately \$482,000 was required after the initial payment of \$250,000. As hereinafter appears, the moneys to be paid by MetPath to Medical Analytics is substantially less than that which is required and Medical Analytics is hopelessly insolvent.

Background

4. Medical Analytics petitioned this Court for an arrangement under Chapter XI of the Act of Congress relating to the Bankruptcy Act, on May 6, 1973. In December, 1973, it was plain that Medical Analytics would not have sufficient funds to continue its operations under Chapter XI. Income Statements submitted to this Court reflected that Medical Analytics continued to remain unprofitable between the time of filing its Petition in Bankruptcy, March 6, 1973, and December 31, 1973. During that period the Statements reflected a loss of \$37,731.04. The Income Statements submitted to this Court reflected that Medical Analytics continued to remain unprofitable between the time of filing its Petition in Bankruptcy, March 6, 1973, and December 31, 1973. During that period the Statements reflected a loss of \$37,731.04. The Income Statements are annexed as Exhibit "B".

5. Raymond Rose became President of Medical Analytics at or about the time of the filing of its Petition and was its architect through the unprofitable periods in bankruptcy, as reflected by the Income Statements. By early 1974 it was apparent to Mr. Rose that a workable plan could not be made without the infusion of a substantial amount of capital. In early February, 1973, Mr. Rose and MetPath, a corporation engaged in the operation of diagnostic testing laboratories (the same business as Medical Analytics) entered into an arrangement whereby MetPath would acquire Medical Analytics' principal assets, its customer lists, in exchange for providing certain moneys which Mr. Rose and MetPath represented would be sufficient to fund the plan. The agreement between Mr. Rose on behalf of Medical Analytics and MetPath is annexed as Exhibit "C".

The Arrangements with MetPath

6. Medical Analytics is a public corporation whose shares are

traded on the over-the-counter market. By reason of a sale of its principal asset, Mr. Rose wrote to Medical Analytics' shareholders to obtain their approval of the agreement. As appears from the letter, annexed as Exhibit "D", he stated that after the MetPath payment and the payment to the creditors, Medical Analytics would have between \$100,000 and \$200,000 in cash and a small but profitable company. At or about the same time MetPath, also itself a public company, advised its shareholders of its agreement to acquire Medical Analytics' National Reference Laboratory. In its notice to its shareholders, annexed hereto as Exhibit "E", MetPath stated that it will provide "the funding necessary to discharge Medical Analytics Plan of Arrangement".

7. The foregoing representations by Mr. Rose and MetPath, i.e., that the proceeds that MetPath would pay to Medical Analytics under the agreement were made at various times to this Bankruptcy Court in support of their request that the Court approve the agreement and the plan. During most of the appearances before this Court after February 1973 was present Mr. Rose, as were MetPath's counsel, Messrs. Marshall, Bratter, Greene, Allison & Tucker.

The Arrangement with MetPath

8. It was plain to Mr. Rose of MetPath and Medical Analytics' creditors that approximately \$482,000 would be required in order for Medical Analytics to have a viable plan. The agreement between Medical Analytics and MetPath itself had a very complicated provision with respect to the requisite payment by MetPath. It provides (Exhibit "C") that Medical Analytics would receive the lesser of \$500,000 or 50% of its monthly gross patient billings from the customer lists. At the time that this agreement was entered into, Mr. Rose, of course, and MetPath knew

what Medical Analytics' gross billings had been for the year prior to the contract between them and could easily project what the billings were likely to have been based upon Medical Analytics' past history. It was very plan that based upon that past history the moneys that MetPath would pay would be substantially insufficient to meet the plan approved by this Court. Nobody, of course, with knowledge of these facts proferred the information to the shareholders, creditors or this Court.

The Fraud Perpetrated on this
Court and Medical Analytics'
Creditors and Shareholders

9. The very plain fact is that the payment to be made by MetPath will be insufficient by approximately \$180,000 to meet the Plan of Arrangement approved by this Court. At the time that the plan was approved, MetPath and Mr. Rose both knew of the short fall. Indeed, MetPath advanced \$250,000 on account of the purchase and obviously examined the billings previously obtained from the customer lists sold.

10. I am advised that at or about the time that Mr. Rose made his arrangement with MetPath a side arrangement was made by him whereby after the purchase and sale were concluded Mr. Rose would become an executive with MetPath at a substantial salary. I believe that Mr. Rose's salary is approximately \$35,000 per year with substantial other emoluments, including a bonus arrangement and stock options. None of these facts were disclosed to the Court, or by Mr. Rose to the Medical Analytics shareholders or by MetPath to its shareholders. Nor was it disclosed that the prior earnings of Medical Analytics established that the proposed plan was a sham and that there were insufficient moneys to

fund the arrangement. Indeed, as hereinabove set forth, the contrary statement was made to all interested parties.

11. At the same time, however, it was critical for Mr. Rose to have the MetPath arrangement approved because not only did he make an arrangement at a substantial salary with MetPath, but he was personally liable on a loan to a bank in Milwaukee, Wisconsin, Mr. Rose, to substantially reduce his liability, sold equipment without authorization and unlawfully (the equipment had been pledged) belonging to Medical Analytics in the amount of approximately \$43,000. These facts, of course, were not disclosed by Mr. Rose or MetPath (by this time, of course, Mr. Rose was MetPath's agent) to any of the interested parties.

My Introduction to the Management of This Company

12. Some time in the middle of March 1974 I, with substantial experience in the business being conducted by Medical Analytics, was asked, together with a Mr. La Penna, to join the Board of Directors of Medical Analytics. A Board meeting was called, the principal purpose of which was to approve the MetPath contract. At that meeting, Mr. Rose represented that Medical Analytics had gross receipts of approximately \$100,000 a month and that after Medical Analytics received the proceeds from the MetPath arrangement not only would the Plan of Arrangement be met, but there would be additional proceeds which would reflect to the Company. This was an absolute lie, as appears from the following:

"INCOME FROM CENTRAL FACILITIES FOR 7-MONTH PERIOD:

Sept. 1973	-	\$ 71,351.62
Oct. 1973	-	87,595.68
Nov. 1973	-	79,581.98
Dec. 1973	-	61,663.16
Jan. 1974	-	84,348.39
Feb. 1974	-	77,302.41
March 1974	-	<u>69,310.86</u>

Total - \$531,154.10

MONTHLY AVERAGE

\$75,879.00

MONTHLY PAYMENT TO MEDICAL ANALYTICS

\$37,939.00 X 10 = \$379,390.00

NEED TO SATISFY PLAN OF ARRANGEMENT MONTHLY

\$48,213.00 X 10 = \$482,130.00" *

At this same meeting, Mr. Rose perpetuated the myth that the Company would be viable, out of bankruptcy, claiming that it would receive \$130,000 from accounts receivable and \$80,000 from the sale of certain equipment. In fact, however, as he well knew, the accounts receivable were used to pay his and other salaries and back taxes (for which he was responsible) and the moneys obtained as the result of the sale of equipment were used to pay a Medical Analytics bank indebtedness personally guaranteed by him. Moreover, the sale of the equipment, Mr.

* Thereby reflecting a shortfall
of at least \$120,000.

Rose failed to disclose, would violate other financial agreements that Medical Analytics had made. The Pro Forma submitted at that March 28th Board of Directors meeting omitted substantially expenses and further inflated the income so that the Board of Directors would be given the impression that an arrangement in bankruptcy for Medical Analytics would be reasonable and proper.

13. At a meeting of the Board of Directors on April 11th myths perpetuated by Mr. Rose and MetPath before the Court and to their respective shareholders and Medical Analytics Board of Directors were repeated. During this meeting, Mr. Rose also discussed the sale of Medical Analytics' facilities in New York, but both he and his counsel who were present neglected to advise the Board that the facilities could not be sold by reason of a security arrangement with a New York bank.

14. Moreover, the Court filings of the expenses incurred by Medical Analytics during the bankruptcy were grossly deflated, there having been omitted approximately \$30,000 in debts to IBM, Farnsworth, Budget Auto Lease and Ipco Hospital Supply, thereby understating to the Court (the Court filing listing payables at \$59,285.02) the true obligations.

By Reason of All of the Fore-
going, the Situation at
Medical Analytics is Hopeless

15. MetPath's payments to Medical Analytics are actually

insufficient by approximately \$180,000 to meet the Plan. Additionally, the expenses incurred during the bankruptcy were unstated by at least \$82,000, exclusive of 1973 taxes. There is no conceivable way that Medical Analytics can meet its obligations under the Plan or otherwise survive. This Court and Medical Analytics Board of Directors and Shareholders were duped by a series of major misrepresentations. The Court should revoke the discharge heretofore made, rescind the arrangement with MetPath (which arrangement was conceived in fraud) and sell to a bona fide third party the Medical Analytics customer lists in order that its creditors receive as much as possible out of this bankruptcy.

16. The steps I am taking herein, upon learning of the facts, have been hereinabove described and were brought to my attention, in the first instance, by reason of the small monthly payments Medical Analytics was receiving from MetPath. I promptly undertook a thorough investigation and had met with counsel and attempted to resolve the problems set forth herein in part by having MetPath undertake to pay in full what it represented it would in order for the payments to creditors to be met. Although I received initial assurances from MetPath's executives that they were willing to stand behind the plan, they have refused to make any firm commitment. I see no alternative, therefore, than for this Court to grant the application sought herein.

17. As it appears from all of the foregoing, Medical Analytics cannot survive with the arrangement heretofore made in this bankruptcy proceeding. I shall remain as a member of the Board of

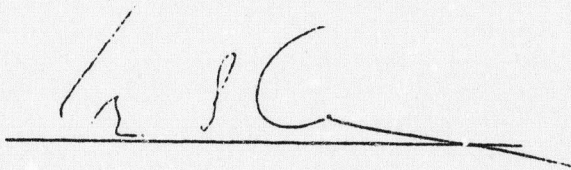
Directors until the Bankruptcy Court acts on this application. I have, however, submitted my resignation as President but shall remain available as a consultant to Medical Analytics to see it through whatever course the Bankruptcy Court determines.



ROBERT B. ABEL

Sworn to before me this

4th day of December, 1974.



ROBERT S. COHEN
NOTARY PUBLIC, State of New York
1974-1975
Qualified in New York County
Commission expires March 30, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter
of
MEDICAL ANALYTICS, INC.,
Debtor.

No. 73 B 222

ORDER CONFIRMING
ARRANGEMENT

At New York, in said District on the 2nd day of
May, 1974, at 1:00 P.M.

The application of MEDICAL ANALYTICS, INC. the above named debtor, for confirmation of the arrangement under Chapter XI of the Act of Congress relating to Bankruptcy proposed by said debtor, which plan dated November 7, 1973, was duly filed by the debtor and having been heard and duly considered; and due notice of said hearing having been given by mail to all persons entitled thereto and no one having appeared in opposition to the confirmation of said arrangement; and

IT appearing that said arrangement having been duly accepted in accordance with provisions of said Chapter XI and that the deposit required by the provisions of said Chapter XI and by said arrangement amounting to the sum of ~~One hundred five thousand four hundred eighty one and 05/100 (\$105,481.05)~~ ^{\$107,946.23} Dollars, has been deposited, subject to the order of the Court in First National City Bank, the depository designated by the Court, and that the deposit required by the provisions of said Chapter and by said arrangement has been deposited subject to the order of the Court with David I. Schivitz, Distributor, appointed by this

Court to receive and distribute the deposit and promissory notes whose compensation shall be fixed by further Order of this Court ~~plus disbursements of \$~~ and it appearing to the satisfaction of this Court that the provisions of Chapter XI have been complied with and the said arrangement is for the best interest of all creditors and is feasible and that the said debtor has not been guilty of any of the acts or failed to perform any of the duties which would be a bar to the discharge of a bankrupt, and that the said proposal and its acceptance are in good faith, and have not been made or procured by any means, promises or acts forbidden by the Bankruptcy Act and there are no reclamation proceedings pending, it is

O R D E R E D:

- 1) That the said plan of arrangement, a copy of which is annexed hereto and marked Exhibit A be and it hereby is confirmed;
- 2) That the mon on deposit to the order of the debtor herein shall be paid by check drawn and signed by David I. Schivitz, Distributor, and countersigned by the undersigned, Bankruptcy Judge, and shall be disbursed to the persons entitled thereto pursuant to the plan of arrangement and its provisions in accordance with the schedules which are annexed hereto and by such supplemental orders as this Court may make;
- 3) That the balance of the monies deposited in excess of the amount required for the foregoing disbursements be paid to the debtor by check, drawn, signed and countersigned as aforesaid;

4) That the plan of arrangement and its provisions shall be binding upon the debtor and upon all creditors of the debtor, whether or not they have accepted said plan of arrangement or have filed their claims, or are affected by said plan of arrangement and whether or not their claims have been scheduled or allowed and are allowable;

5) That the debtor herein, by the confirmation of the proposed plan of arrangement be and it hereby is discharged of all its unsecured debts and liabilities provided for by the said plan of arrangement or in this order, but excluding such debts as under Section 17 of the Bankruptcy Act are not dischargeable;

6) That all creditors affected by the terms of the plan of arrangement be, and they hereby are forever restrained and enjoined from taking any further action or proceeding in connection with their said claims except as provided herein; and except to enforce, the consummation of the terms of the plan of arrangement as confined herein;

7) That the Court hereby retains jurisdiction until the provisions of the arrangement after confirmation have been performed to Sections 357 (7) and 368 of the Bankruptcy Act.

8) That all property, assets and effects of the debtor in possession and the debtor be restored to the debtor, subject to valid liens; but the debtor is to maintain a separate account in a banking institution in the City of New York in which is to be deposited all monies to be received from MetPath, Inc. in accordance with the provisions of the agreement dated February 12, 1974, approved by order of this Court dated March 18, 1974, and such funds are to be deemed trust funds for the benefit of

and to be the obligation of Medical Analytics, Inc. to distribute to Director of Internal Revenue in accordance with the stipulation dated April 16, 1974, to the secured creditors, Bank of Commerce and M. & I. Northern Bank and to the unsecured creditors whose claims have been filed and allowed in the within proceedings until such time as all of the terms and conditions of debtor's arrangement have been duly performed and the payments from said fund shall be made by checks signed by Raymond Rose, who is to be personally liable in the event any of the funds are diverted for a purpose other than as herein set forth.

9) Notice shall be given to all persons set forth in Schedule (D) hereto annexed and made part hereof, whose claims have been scheduled by the debtor and who have not filed proofs of claim herein, advising them of the entry of this order and notifying them to file their claims within thirty (30) days after the date of mailing of said notice, and in the event of failure to do so, the claims of such persons shall not be allowed and shall be barred. Proofs of claims filed pursuant to this paragraph will not be allowed for amounts in excess of those set forth in the debtor's said Schedules. Objections to any claims so filed shall be brought on for hearing within sixty (60) days from the date of mailing said notice, upon at least ten (10) days notice of hearing. Upon failure to comply with the provisions of this paragraph, any objections to the allowance of the claims affected thereby shall be deemed waived and such claims shall be allowed. Any claim in Schedule (D) which is hereafter allowed shall be deemed included in the appropriate schedule hereto annexed;

10) That the debtor is subject to any and all further orders issued by this Court.

11) That proof of claim filed by a creditor within thirty (30) days after mailing with notice of confirmation to him as provided in Section 355 of the Bankruptcy Act shall be allowed for an amount not in excess of the amounts set forth in the debtor's schedules unless objections to the allowance of such claims are filed within forty (40) days after mailing of such notice.

12) That the amount appearing in the annexed schedules as allocable to the Referee's Salary and Expense Fund is estimated and provisional only, the precise amount to be finally fixed by the undersigned in appropriate supplemental orders;

13) That within ninety (90) days from the date hereof, or until further order of the Court, the Disbursing Agent shall stop payment on all checks then remaining unpaid and deposit the total amount of such unpaid checks with the Clerk of this Court, by certified check, drawn, signed and countersigned as aforesaid, and at the same time filing with said Clerk of list of the names and addresses of the persons entitled to the monies deposited and the respective amounts to which each is entitled;

14) That within one hundred twenty (120) days from the date hereof, or until the further order of this Court, the Disbursing Agent shall file with this Court a verified final report showing compliance with this order, and the order of confirmation, together with all cancelled vouchers and a bank statement showing

distribution of all funds which were deposited as required by the provisions of Chapter XI of the Bankruptcy Act and the Plan of Arrangement;

15) That objections to claims which have been proved and filed but not allowed or disallowed herein prior to the date hereof, as set forth in Schedule (E) hereto annexed and made a part hereof, and not heretofore objected to, shall be brought on for hearing within thirty (30) days from the date hereof upon at least ten (10) days notice of hearing. Upon failure to comply with the provisions of this paragraph, any objections to the allowance of claims affected thereby shall be deemed waived and such claims shall be allowed. Any claim in Schedule (E) which is hereafter allowed shall be deemed included in the appropriate schedule attached hereto.

16) That the stipulation between the debtor and District Director of Internal Revenue be and the same is incorporated herein with the same force and effect as though fully set forth herein.

17) The Court retains jurisdiction of the objections to the allowance of the priority administration claim of Advance Medical Laboratories, Inc. and the debtor's counterclaim and the objections to the allowance of the administration claim of Capital Consulting Corporation and the debtor is to make payments

to such creditors in accordance with provisions of the arrangement
in the event that a final order is entered allowing said claims.

J. Edward J. Ryan
BANKRUPTCY JUDGE

United States of America, ss.
Southern District of New York)

I, Edward J. Ryan, Bankruptcy Judge,
and for the said district, do hereby
certify that the within instrument is a
true and correct copy of the original
as the same appears of record in my
office. In witness whereof I hereunto set
my hand this 22 day of May, 1974.

Edward J. Ryan
Bankruptcy Judge
By S/ Irene Tiller Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter

Of

PETITION FOR CONFIRMATION

NO. 73 B 222

MEDICAL ANALYTICS, INC.,

Debtor.

The above named debtor respectfully represents:

1. The arrangement under Chapter XI of the Act of Congress relating to Bankruptcy, proposed by the debtor, dated November 7, 1973, after the petition filed by it on March 6, 1973 has been accepted.

2. The deposit of the consideration required by the provisions of said Chapter has been made.

3. The sum of ^{\$ 107,946.23} ~~\$105,481.05~~ has been deposited in the depository designated by the Court.

4. The provisions of Chapter XI of said Act have been complied with.

5. Said arrangement is for the best interests of the creditors and is feasible.

6. The debtor has not been guilty of any of the acts or failed to perform any of the duties which would be a bar to the discharge of a bankrupt.

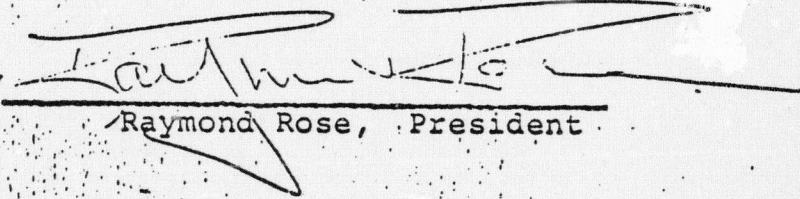
7. The proposal and its acceptances are in good faith and have not been made or procured by any means, promises or acts forbidden by the said Act.

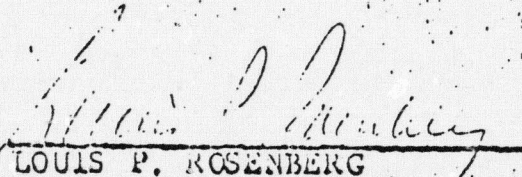
WHEREFORE, the debtor respectfully prays that the arrangement be confirmed by this Court.

May 2
Dated: ~~April 18~~, 1974

MEDICAL ANALYTICS, INC.

by


Raymond Rose, President


LOUIS P. ROSENBERG
Attorney for Debtor

In the Matter

of

MEDICAL ANALYTICS, INC.,

Debtor.

ARRANGEMENT

73 B 222

The above-named debtor proposes the following arrangement with its unsecured creditors:

1. TAXES AND PRIORITY CLAIMS

All taxes payable to Federal State, municipal and other taxing agencies entitled to priority and all other claims that may be entitled to priority under the provisions of the Bankruptcy Act shall be paid by the debtor upon confirmation in accordance with the terms of agreements as shall have been approved by the Court in charge of this proceeding.

2. SECURED CREDITORS

The debtor assumes performance of all agreements with those creditors who hold security of the debtor to the extent that the underlying security agreements, if any, have not been disaffirmed, and agrees to carry out the provisions of any of such agreements in accordance with their terms.

3. UNSECURED CLAIMS

The general unsecured claims of the debtor are to be settled and satisfied as follows:

- (a) 10% of their respective claims payable 2½% three months after the Order of Confirmation; 2½% one year from Order of Confirmation; 2½% eighteen months after confirmation and 2½% two years after confirmation, evidenced by non-interest bearing promissory notes which will provide:
- (b) That in the event of default in payment of one of the notes, and said default continuing for a period of ten (10) days, then all the remaining notes shall become due and payable at the option of the holder thereof, if presented for payment within thirty (30) days of said default.
- (c) The Company (Debtor) shall not declare any dividends while any of said notes are still outstanding.
- (d) Notices required hereby shall be mailed to the Company (Debtor) at its address and to the noteholders at addresses provided by them to the Company, and the Company shall be only required to mail such notice or notices to said address as provided.

4. RETENTION OF JURISDICTION

The Court shall retain jurisdiction of the proceeding solely for the purposes provided for in Section 387 of and pursuant to Section 368 of the Bankruptcy Act.

Dated: New York, New York
November 7, 1973

MEDICAL ANALYTICS, INC.

By: Raymond Rose

SCHEDULE A
ADMINISTRATION EXPENSES

SCHEDULE B

LIST OF PRIORITY CLAIMS

SCHEDULE C

LIST OF CREDITORS WHOSE CLAIMS HAVE BEEN FILED AND ALLOWED

MEDICAL ANALYTICS, INC.

STATEMENT OF INCOME
(without audit)



METPATH

Founded - Controlled - Directed by Physicians

February 12, 1974

Medical Analytics, Inc.
530 West Northwest Highway
Mt. Prospect, Illinois 60056

Gentlemen:

This letter will confirm our agreement as follows:

1. Upon receipt by MetPath, Inc. ("MetPath") of a letter or release satisfactory to its counsel from Advance Medical Laboratories, Inc. ("Advance") releasing any and all rights of Advance pursuant to that certain letter agreement, dated September 20, 1973, between Advance and Medical Analytics, Inc. ("Medical"), MetPath will lend to Medical, for a term of six (6) months, the sum of \$35,000.00 to be evidenced by Medical's promissory note, bearing interest at ten per cent (10%), which is to be secured by all of the collateral listed on Schedule A annexed hereto.

2. MetPath undertakes, upon the terms and conditions hereinafter set forth, to provide financing to confirm a Plan of Arrangement for Medical.

3. MetPath will provide the funds necessary, not to exceed \$250,000.00 in the aggregate, to satisfy the following claims against Medical:

a. Administration expenses, consisting of court fees, counsel for debtor, counsel for creditors' committee, secretary to creditors' committee, and court appointed disbursing agent;

b. An initial payment with respect to all tax claims;

c. All wage and other priority claims; and

d. An initial payment to secured creditors.

4. The obligation of MetPath, set forth in the preceding paragraph, shall be conditioned upon Medical enter-

60 Commerce Way
Hackensack, New Jersey 07666
N.J. (201) 486-1100
N.Y. (212) 716-2040
Westchester (914) 969-6990

1051 Beacon Street
Boston, Massachusetts 02136
(617) 738-4406

ing into arrangements for deferred payments of secured creditors on terms and conditions satisfactory to MetPath.

5. In exchange for the funding specified in paragraph 3 above, upon the first payment with respect thereto, Medical will sell, assign and deliver to MetPath true and complete lists of all customers now or previously serviced or solicited by Medical within the cities of New York, Chicago and Milwaukee and the regions within a 75-mile radius of each such city. In addition, as further consideration for the payment to be made by MetPath, from and after the first such payment, neither Medical nor Mr. Raymond Rose, its President, will compete, for a period of five (5) years, in the cities and regions specified in the preceding sentence with the clinical laboratory business now or hereafter conducted therein by MetPath.

6. Commencing with the first full month following the month in which Medical's Plan of Arrangement shall be confirmed and continuing for a total period of ten (10) months, MetPath shall pay to Medical an amount, which is not to exceed in the aggregate the lesser of (a) \$500,000.00, and (b) such sum as shall be necessary to effect all payments called for by Medical's Plan of Arrangement as the same shall be confirmed, equal to the sum of (a) fifty per cent (50%) of the monthly gross receipts from patient billings, and (b) fifty per cent (50%) of the monthly sales from other billings resulting from any of the customers of Medical set forth on the customer lists delivered pursuant to the immediately preceding paragraph. Amounts payable with respect to each such month shall be paid by MetPath to Medical on the 15th day of the next succeeding month, accompanied by a computer print-out or other statement reflecting billings during the relevant month.

7. Medical will use its best efforts to cause to be confirmed by the bankruptcy court its Plan of Arrangement as presently proposed, and will not cause or permit such Plan to be changed in any manner without prior written consent of MetPath.

8. This agreement shall be subject to and conditioned upon the receipt by Medical of such approvals as shall be required of its creditors' committee and the bankruptcy court pursuant to Chapter XI of the Federal Bankruptcy Act.

Please confirm that the foregoing correctly
sets forth our agreement by signing and returning to MetPath
a copy of this letter provided for that purpose.

Very truly yours,

METPATH, INC.

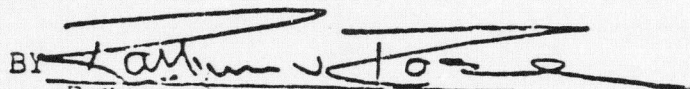
BY



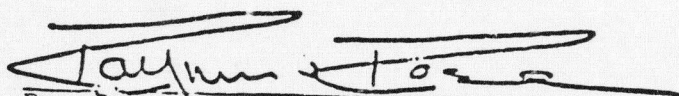
AGREED AND ACCEPTED:

MEDICAL ANALYTICS, INC.

BY


Raymond Rose, President

AGREED AND ACCEPTED as to
Paragraph 5:


Raymond Rose, Individually

February 19, 1974

Dear Shareholder:

Since our last communication, a number of things have occurred which affect current and future operations of your company. It would seem that this is an appropriate time to submit to you a complete report concerning our operations since March 6, 1973 (date of Chapter XI petition) and our future plans.

As you are all aware, the company filed a petition under Chapter XI of the Bankruptcy Act on March 6th of 1973. This action was necessitated by the fact that the company had accumulated approximately \$1.3 million in unsecured indebtedness that it was unable to amortize. A number of these unsecured creditors were pressing for court action and had received judgements against the company which could have at that time, had they been allowed to go through, forced a straight bankruptcy situation. In order to forestall that, the company sought the protection of the court.

Immediately following the filing of the petition, prior management of the company resigned and current management was appointed. These appointments were verified by the court and management was given permission to operate in the capacity of Debtor-in-Possession, which pursuant to the Chapter XI regulations, is equivalent in authority to a trustee appointment by the court in straight bankruptcy. New management immediately began an in-depth evaluation of the current operating status of the company, its operations and nature of its business, costs, etc. In addition, arrangements were made with the firm of Jaffe, Haft and Spring, the company's auditors, to as rapidly as possible complete an audit of the 1972 fiscal year. The court approved the appointment of this auditing firm and a fee for their services was established. After approximately one month, the auditors reported to management that until our internal people were able to either locate, construct or reconstruct certain records, it would be impossible for them to

medical
analytics INC complete physician support services

530 W Northwest Highway
Mt Prospect, IL 60056
(312) 253-8655

proceed any further. We began an earnest search for a staff accountant who could handle this problem. At the same time our evaluation of the ongoing operations of the company continued.

Shortly thereafter, we obtained the services of a certified public accountant through the efforts of Ernst & Ernst national public accounting firm and he was given the assignment of investigating the available internal records and either constructing or reconstructing what was necessary. At the same time we effected certain revisions in the operating structure and methods of the company that greatly reduced our overhead. Throughout the summer our efforts concerning the financial records continued as well as our efforts to consolidate operations. In August of 1973, through available court proceedings, we were able to terminate contracts in existence with individuals and landlords, etc., amounting to approximately \$100,000 per year. These steps in no way affected the efficiency of our operation. At approximately the same time we had reached a point with the financial records to necessitate the return of our outside auditors and they commenced again their audit of the 1972 records. After a short period of time they informed us that due to the unavailability of certain portions of the records and the fact that they had to be reconstructed in other than a routine fashion, that they would not, even upon completion of an audit if that were possible, be able to certify it. This, of course, gave us cause for great concern because an audit that was uncertified with a number of disclaimers attached was almost as good as no audit at all. With this information we doubled our efforts in an attempt to put the records in a condition to cause the audit to be certifiable. To date, we have found that this is an impossible task.

Throughout the period of time that we are concerned with in this report, we found that no matter how much we were able to accomplish in the way of economies and efficiencies, that we were still faced with a decreased yet severe negative cash flow situation. This condition became more pronounced in the months of August and September due to the traditional seasonal falloff in sales during the months of July and August. The severity of this cash flow problem caused an arrears in our withholding tax payments. Even though the IRS was very lenient in their treatment of this case, they were very concerned about allowing this arrearage to exist, especially with a company in a Chapter XI situation. This problem necessitated

our receiving court permission to obtain a loan in order to bring the arrears in payments up-to-date, the amount of this being \$35,000.

During this entire time period we actively sought outside sources of new investment capital in order to make it possible for the company to arrive at an equitable plan of arrangement under Chapter XI. It became evident to us very quickly that it would be almost impossible to obtain monies for investment directly into the company because of the size of its liabilities and because it appeared that what one was able to see was something like the tip of the iceberg, and not the entire liability. We finally arrived at an arrangement with a New York company, also engaged in the clinical laboratory industry, who were interested in putting together a package to assist in financing our plan. It was also from this group that we were able to obtain the \$35,000 loan to handle the problem indicated in the previous paragraph. As we became more involved with these people and they became more aware of our particular situation, it became increasingly evident that they would be unable to provide the total finances necessary to solve our problem. It was then by mutual consent that our prior arrangement with them was terminated. At approximately this time we were able to arrive at an arrangement with another company much larger and much more capable financially to attack our problem. I am enclosing a copy of a letter of agreement drafted and agreed to between MetPath, Inc. and Medical Analytics, Inc. The basic nature of this agreement is (and which was the basic nature of every individual contacted for purposes of investment) that they are not interested in the acquisition of Medical Analytics, Inc. but will provide the funds necessary for Medical Analytics, Inc. to solve its financial difficulty for which Medical Analytics must sell its only tangible asset, and that is its ongoing laboratory business operations. We have the following choices:

1. We accept the amount of money proposed under the conditions stipulated and end up with a company which will be doing approximately \$200,000 a year in sales having approximately \$100,000 to \$200,000 cash in the bank, or
2. We face immediate bankruptcy and have nothing.

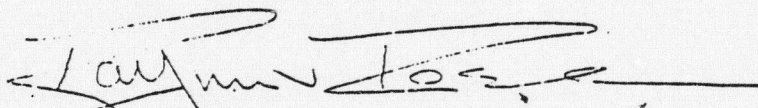
It is our feeling that even though the opportunity that we have for a revival of Medical Analytics may be somewhat slim, at least we have a chance at regaining something, but only if we accept the type of proposal put forth.

Over the period of time since September, all other members of the Board of Directors and officers of this corporation have resigned primarily due to the somewhat rapidly deteriorating situation. At the moment, I am the sole survivor. I hesitate as an individual without the benefit of a quorum of a legally constituted board to take a course of action concerning this company which may be contrary to the wishes of the stockholders. I would be assuming on my own, tremendous liabilities as you can be well aware. I am asking you at this time for your opinion. You will find enclosed a preaddressed postcard providing you with an opportunity to either approve or disapprove of the proposed program. I would ask that you complete this card and return it as rapidly as possible. I further propose the following, that upon court approval of the proposed program, I would remain, at your pleasure, as President of Medical Analytics in order that the incoming funds be properly disbursed and that the future viability of the company be assured. I am enclosing a copy of a financial statement showing our activity since March 6th. Understand that these figures are not audited, but they constitute a consolidation of the monthly reports that we have been submitting to the federal bankruptcy court. I am sure that your analysis of these figures will tell you the same story that they have told us. These figures, by the way, do not include any data prior to the filing of the petition of March 6, 1973.

I am sure that if we all cooperate that we will be able to arrive at a situation, where once again, Medical Analytics may well be able to become a viable organization even though it may not necessarily be in the same field of endeavor. I remain

Yours truly,

MEDICAL ANALYTICS, INC.



Raymond Rose
President

RR/jb
Enclosures

METPATH EXPANDS INTO THE MIDWEST

Hackensack, New Jersey, February 19, 1974 -- MetPath Inc. (NASDAQ), of Hackensack, New Jersey, and Medical Analytics, Inc. (NASDAQ), of Chicago, today announced an agreement in principle which would conclude Medical Analytics' Chapter XI proceedings and permit the continuation of laboratory services to the company's customers.

Under this agreement, which requires court approval, MetPath Inc. will provide the funding necessary to discharge Medical Analytics' Plan of Arrangement. In return, MetPath will service Medical Analytics' business in Chicago and Milwaukee, which currently amounts to approximately \$1.2 million annually.

MetPath Inc., one of the nation's largest independent clinical laboratories, had sales in excess of \$5.1 million in fiscal 1973. It is licensed by the federal government for interstate services and currently operates facilities in New York, New Jersey, Massachusetts, Pennsylvania and Iowa.

The Company offers more than 600 individual laboratory tests on blood and urine specimens to doctors, hospitals, institutions and the government, with the bulk of its work performed on highly-advanced, computer controlled equipment. This permits overnight laboratory service to virtually any point in the United States.

*** PRESS RELEASE ***

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

In the Matter	:	Index No. 73 B 222
of	:	NOTICE OF CROSS-MOTION TO
MEDICAL ANALYTICS, INC.,	:	DISMISS PETITION OF
	:	<u>MEDICAL ANALYTICS, INC.</u>
Debtor.	:	

-----X

SIRS:

PLEASE TAKE NOTICE that upon the annexed verified answer of MetPath Inc. and the affidavit of Robert A. Burns, sworn to April 1, 1975, MetPath Inc., a party in interest with respect to the petition and motion of Medical Analytics, Inc., will move this Court, before the Honorable Edward J. Ryan, Bankruptcy Judge, on April 7, 1975 at 10 o'clock in the forenoon, for an order pursuant to Title 11 U.S.C. 786, dismissing the said petition and motion of Medical Analytics, Inc., with costs to MetPath Inc., and for such other relief as the Court shall deem just and proper.

Dated: New York, New York
April 1, 1975

Yours, etc.

MARSHALL, BRATTER, GREENE,
ALLISON & TUCKER

BY 

A Member of the Firm
Attorneys for MetPath Inc.
430 Park Avenue
New York, New York 10022
(212) 421-7200

TO:

LANS, FEINBERG & COHEN
Attorneys for Medical Analytics, Inc.

RAYMOND ROSE

LOUIS ROSENBERG, ESQ.
Attorney for Debtor in Bankruptcy

FISHER, HECHT & FISHER
Attorneys for Creditors

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
IN THE MATTER OF

73 B 222

MEDICAL ANALYTICS, INC.,

ANSWER

Debtor.
-----X

METPATH INC. ("MetPath"), for its answer to the petition herein by its counsel, Marshall, Bratter, Greene, Allison & Tucker, respectfully alleges as follows:

1. Admits the allegations of Paragraph 1, except denies that Medical Analytics, Inc. ("Medical") was discharged under the Bankruptcy Act on May 2, 1974, and admits and avers that the Plan of Arrangement proposed by Medical was confirmed by this Court on May 2, 1974.

2. Denies each and every allegation contained in Paragraph 2 of the petition except states that it lacks knowledge sufficient to form a belief as to the truth of any allegation that Raymond Rose perpetrated a fraud on Medical.

3. Denies each and every allegation contained in Paragraph 3 of the petition, except admits and avers that MetPath offered to and did employ Raymond Rose and states that it lacks knowledge sufficient to form a belief as to the truth of any allegation with respect to any acts of fraud allegedly committed by said Raymond Rose.

4. Denies each and every allegation contained in Paragraph 4 of the petition, except states that it lacks knowledge sufficient to form a belief as to the knowledge of Raymond Rose of any fraud.

5. Denies each and every allegation contained in Paragraph 5 of the petition.

6. In response to Paragraph 6 of the petition, incorporates by reference the affidavit of Robert A. Burns annexed hereto.

FIRST DEFENSE

7. The relief sought by the petition is barred by Title 11 U.S.C. 786 because the petition was brought more than six months after the date of confirmation of Medical's Plan of Arrangement.

SECOND DEFENSE

8. This Court lacks jurisdiction over the subject matter of the petition.

THIRD DEFENSE

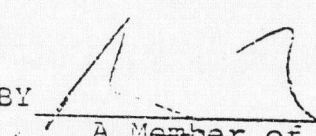
9. The relief sought would amount to a taking of Met-Path's property without due process of law.

WHEREFORE, MetPath respectfully prays that the petition of Medical be dismissed, together with the costs and disbursements to MetPath of responding to the petition and for such other and further relief as to the Court may seem just and proper.

Dated: New York, New York
April / , 1975

YOURS, ETC.

MARSHALL, BRATTER, GREENE,
ALLISON & TUCKER
Attorneys for MetPath Inc.
430 Park Avenue
New York, New York 10022
(212) 421-7200

BY 
A Member of the Firm

TO:

LANS, FEINBERG & COHEN
Attorneys for Petitioner

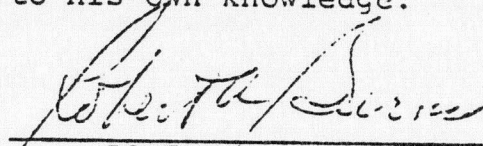
RAYMOND ROSE

LOUIS ROSENBERG, ESQ.
Attorney for Debtor in Bankruptcy

FISHER, HECHT & FISHER
Attorneys for Creditors

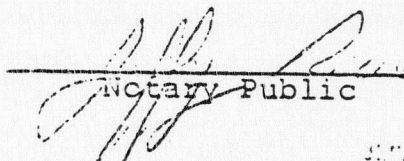
STATE OF NEW YORK)
)
COUNTY OF NEW YORK) ss.:

ROBERT A. BURNS, being duly sworn, deposes and says that he is the President of MetPath Inc., the corporation on whose behalf the within Answer to petition is being submitted; that he has read the foregoing Answer and knows the contents thereof and that same is true to his own knowledge.



ROBERT A. BURNS

Sworn to before me this
 day of April, 1975.



Notary Public

JOHN J. HENNING
Notary Public, State of New York
No. 312910270
Qualified in New York County
Commission Expires March 30, 1977.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
IN THE MATTER OF

MEDICAL ANALYTICS, INC.,

Debtor.

73 B 222

AFFIDAVIT IN OPPOSITION TO
MOTION TO REJECT ALLEGED
DISCHARGE IN BANKRUPTCY UPON
GROUND OF FRAUD AND IN SUP-
PORT OF CROSS-MOTION TO
-----X DISMISS THE PETITION

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

ROBERT A. BURNS, being duly sworn, deposes and says:

1. I am the President of MetPath Inc. ("MetPath"), a party in interest with respect to the petition and motion of Medical Analytics, Inc. ("Medical"), for an order rejecting the "discharge in bankruptcy" heretofore granted in favor of Medical and rescinding an agreement between MetPath and Medical and further ordering a sale of the assets allegedly fraudulently purchased by MetPath from Medical and applying the proceeds thereof in favor of the creditors of Medical. I submit this affidavit in opposition to said motion and petition and in support of MetPath's cross-motion to dismiss the petition as barred by the applicable statute of limitations.

2. I respectfully submit that said petition should be dismissed, Medical's motion be denied, and MetPath's cross-motion be granted for the following reasons:

(a) I am informed by my counsel, and I verily believe,

a Plan of Arrangement must be commenced within six months from the date of confirmation of the Plan of Arrangement. Medical's Plan of Arrangement was confirmed by this Court on May 2, 1974, and, accordingly, the last day for petitioner to have timely brought this petition was November 2, 1974. In fact, the petition was dated December 4, 1974. Accordingly, the relief requested in the petition is barred by the applicable statute of limitations and the petition must be dismissed.

(b) As is demonstrated below, no fraud has been perpetrated nor any impropriety committed by MetPath.

3. On behalf of MetPath, I personally participated in negotiations with Medical which resulted in the agreement dated February 12, 1974 ("Agreement") between MetPath and Medical, pursuant to which MetPath purchased from Medical lists of all customers serviced by Medical within the cities of Chicago and Milwaukee for a purchase price equal to the sum of (i) \$250,000, and (ii) "an amount, which is not to exceed in the aggregate the lesser of (a) \$500,000.00, and (b) such sum as shall be necessary to effect all payments called for by Medical's Plan of Arrangement as the same shall be confirmed, equal to the sum of (a) fifty per cent (50%) of the monthly gross receipts from patient billings, and (b) fifty per cent (50%) of the monthly sales from other billings resulting from any of the customers of Medical set forth on the customer lists delivered pursuant to [the Agreement]."

4. The Agreement was duly presented to counsel for the Creditors' Committee for approval and to this Court for its approval, and both such approvals were received.

5. MetPath has fully and completely complied with each and every obligation imposed on it by the Agreement.

6. In connection with entering into the Agreement, I was informed by Raymond Rose, the then President of Medical, who was the only representative of Medical with whom MetPath dealt in connection with the Agreement, that Medical's monthly sales were in the range of \$100,000-\$110,000. Accordingly, it was my expectation that if MetPath were able to maintain the sales to Medical's former customers at comparable levels, the Agreement would provide for Medical, over a period of ten months, the sum of approximately \$500,000. However, inasmuch as MetPath did not have the opportunity or time to perform any kind of audit of Medical's books (and, indeed, such audit may well have been futile in view of Medical's apparently confused books and records), as a matter of prudent business judgment, I made certain that the Agreement provided that future payments to Medical would be contingent upon sales actually made by MetPath to Medical's former customers.

7. In fact, MetPath's monthly sales to Medical's former customers have ranged from approximately \$49,500 to \$62,000, and, accordingly, monthly amounts payable by MetPath to Medical under the agreement were in all cases less than \$50,000.

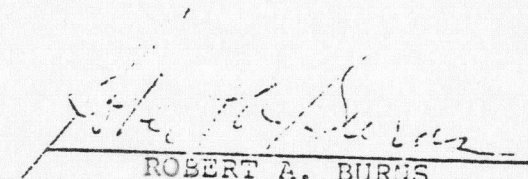
8. At all times, Raymond Rose was the agent of Medical in connection with the Agreement. MetPath, in its dealings with Medical, conducted negotiations with Mr. Rose, Medical's President, and Louis Rosenberg, Esq., its counsel. At the time of the Agreement, Mr. Rose was the only person who knew the whole operation of Medical and had contact with all of its customers. While MetPath did employ Mr. Rose after the Agreement was approved, it is obvious that the interests of Medical, its creditors and MetPath are all best served by maintaining continuity of customer contact thereby preserving the customer list as an asset and maximizing its exploitation.

9. Insofar as known to me, there has been no allegation by anyone that MetPath has not paid to Medical each and every dollar which it was obligated to pay under the Agreement. In fact, MetPath has paid to Medical all amounts which it has become obligated to pay under the Agreement.

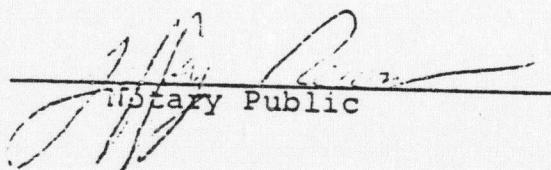
10. Shortly after Medical's Plan was confirmed by this Court, I began to receive telephone calls and visits from Mr. Robert Abel, the President of Medical. On each occasion, Mr. Abel informed me that operations at Medical were not going well and that Medical was having severe cash-flow difficulties. He requested assistance from MetPath to alleviate Medical's current operating cash-flow difficulties and we responded by extending the time for Medical to repay to MetPath a loan made by MetPath in February 1974.

11. At the end of September 1974, I received a letter from Lans, Feinberg & Cohen, counsel to Medical, alleging that MetPath had misrepresented certain material facts to some unstated party. I thereupon instructed my counsel to arrange a meeting with Robert Abel of Medical, me and our respective counsel in an attempt to learn precisely what Medical's counsel was abstrusely alluding to. At such meeting, it became apparent that the position of Medical was no more than a blatant attempt to extort from MetPath payments over and above those required by the Agreement by threatening a proceeding to somehow "rescind" the Agreement. Since MetPath has already paid to or for the account of Medical the aggregate sum of \$499,993, pursuant to the Agreement, it is difficult to comprehend how Medical proposes that the Agreement be rescinded unless it is proposing that the Court expropriate the customer list sold to MetPath without repayment of the consideration paid therefor.

12. For the foregoing reasons, your deponent respectfully prays that the petition of Medical be dismissed and the instant motion be denied.


ROBERT A. BURNS

Sworn to before me this
10 day of April, 1975.


Notary Public

JEFFREY LEVYMAN
Notary Public, State of New York
No. 31 2260070
Qualified in New York County
Commission Expires March 30, 1977

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
In the Matter : Index No. 73 B 222
of : ORDER
MEDICAL ANALYTICS, INC., :
Debtor. :
----- x

FILED

MAY 16 1975

EDWARD J. RYAN
BANKRUPTCY JUDGE Court

Medical Analytics, Inc. having duly moved this Court by Notice of Motion dated December 4, 1974, for an order pursuant to Title 11 U.S.C. §33, setting aside the confirmation and discharge heretofore granted Medical Analytics, Inc. upon the grounds of fraud in procuring said confirmation and discharge and revoking the approval heretofore given of an agreement made between MetPath Inc. and Medical Analytics, Inc. and directing a sale of the assets purchased by MetPath Inc. and applying the proceeds thereof in favor of the creditors, with costs to Medical Analytics, Inc., and MetPath Inc. having duly cross-moved this Court by a Notice of Motion dated April 1, 1975, for an order pursuant to Title 11 U.S.C. §786, dismissing the petition of Medical Analytics, Inc., with costs to MetPath Inc., and said motions having come on for hearing before this Court on May 7, 1975;

NOW, upon reading and filing the Notice of Motion of Medical Analytics, Inc., dated December 4, 1974, the verified petition and the affidavit of Robert B. Abel, sworn to on December 4, 1974 in support of said motion, together with proof of due service of the foregoing papers upon the attorneys for the parties in interest herein, and upon reading and filing the

Notice of cross-motion of MetPath Inc., dated April 1, 1975,
the verified answer and the affidavit of Robert A. Burns, sworn
to April 1, 1975 in opposition to the motion of Medical Analytics,
Inc. and in support of the cross-motion of MetPath Inc., together
with proof of due service of the foregoing papers upon the attor-
neys for the parties in interest herein;

AND, ^{the cross-motion} this matter having come on to be heard for argumen
on May 7, 1975;

AND, Medical Analytics, Inc. having appeared by Lans,
Feinberg & Cohen, Alan J. Krieger of Counsel, and MetPath Inc.
having appeared by Marshall, Bratter, Greene, Allison & Tucker,
V. James Mann of Counsel;

AND, it appearing that Medical Analytics, Inc.'s
petition was not filed within six months of the confirmation
of Medical Analytics, Inc.'s plan of arrangement;

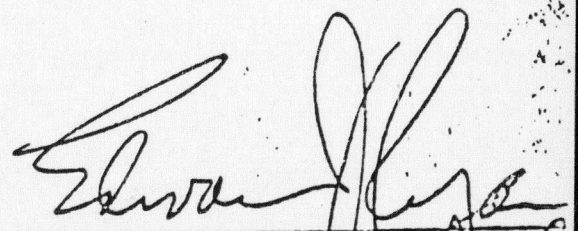
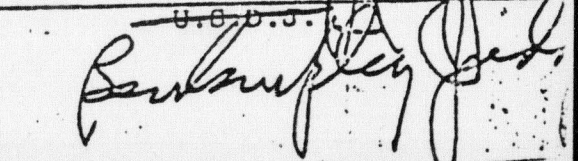
AND, due deliberation having been had;

NOW, on motion of Marshall, Bratter, Greene, Allison,
& Tucker, attorneys for MetPath Inc., it is hereby

ORDERED, that the motion of Medical Analytics, Inc., b
and the same hereby is, denied, the cross-motion of MetPath Inc.
be, and the same hereby is, granted, and, accordingly, the
petition of Medical Analytics Inc. is dismissed; and it is
further

ORDERED, that MetPath Inc. be awarded the costs of
this motion.

Dated: New York, New York
May 16th, 1975


U.S.D.J.


SOUTHERN DISTRICT OF NEW YORK

- - - - - x

In the Matter	:	INDEX NO. 73 B 222
of	:	
MEDICAL ANALYTICS, INC.,	:	NOTICE OF APPEAL TO
	:	DISTRICT COURT
Debtor.	:	

- - - - - x

TAKE NOTICE that MEDICAL ANALYTICS, INC., petitioner in the above entitled proceeding, hereby appeals to the United States District Court for the Southern District of New York from the Order of the Bankruptcy Judge entered in this case on May 16, 1975, denying the motion of Medical Analytics, Inc. to set aside the confirmation and discharge heretofore granted and for other relief, granting the cross-motion of MetPath Inc., dated April 1, 1975, to dismiss the Petition of Medical Analytics, Inc. for said relief, dismissing the said Petition of Medical Analytics, Inc., and awarding costs on the motion to MetPath Inc.

The parties to the Order appealed from and the names and addresses of their respective attorneys are as follows:


Lans Feinberg & Cohen
Attorneys for Petitioner,
Medical Analytics, Inc.
555 Madison Avenue
New York, New York 10022
(212) 421-0700

Marshall, Bratter, Greene,
Allison & Tucker
Attorneys for MetPath Inc.
430 Park Avenue
New York, New York 10022
(212) 421-7200

Raymond Rose
c/o MetPath Inc.
60 Commerce Way
Hackensack, New Jersey 07606

Fisher, Hecht & Fisher
Attorneys for Creditors
200 Park Avenue South
New York, New York
(212) Sp. 7-5222

Louis Rosenberg, Esq.
Attorney for Debtor in
Bankruptcy
16 Court Street
Brooklyn, New York
(212) Ul. 5-6840

Lans Feinberg & Cohen
By 
A Member of the Firm
Attorneys for Petitioner/Appella
Medical Analytics, Inc.
555 Madison Avenue
New York, New York 10022
(212) 421-0700

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FILED
U.S. DISTRICT COURT

DEC 1 1 41 PM '75
S.D. OF N.Y.

----- X

In the Matter	:	
of	:	Index No. 73 B 222
MEDICAL ANALYTICS, INC.,	:	MEMORANDUM
Debtor.	:	AND ORDER

----- X

CONNER, D. J.:

This is an appeal from an order of Bankruptcy Judge Edward J. Ryan, entered May 16, 1975, granting the motion of respondent MetPath, Inc. (MetPath) to dismiss the petition of the debtor-appellant Medical Analytics, Inc. (Medical) to set aside the confirmation and discharge entered May 2, 1974 on the ground of fraud. Judge Ryan ruled that the petition was time-barred since it was not filed until December 12, 1974, more than six months after the date of the confirmation, contrary to 11 U.S.C. § 786.

Medical argues that because the fraud had been concealed by MetPath and its President, Raymond Rose (Rose), the six months' period of limitation should have started running only when Medical discovered the fraud. In support of this argument, Medical relies upon the considerable body of decisional law to the effect that the statute of limitations against a cause of action for fraud

starts running only when the plaintiff discovered or, with due diligence, should have discovered, the fraud. Holmberg v. Armbrrecht, 327 U.S. 392, 396-97 (1946); Bailey v. Glover, 21 Wall 342, 348 (1875).

That principle may indeed be applicable to the present facts, but not in the way Medical asserts. The result of its application here is that, if Medical has a cause of action for fraud against MetPath and Rose, the statute of limitations did not start running against that cause of action until Medical knew or reasonably should have known of the fraud.

But Medical is not here asserting a cause of action for damages it suffered as a consequence of the fraud. Instead, it seeks to have the confirmation set aside because of fraud in its procurement, and Section 786 specifically provides that this particular type of relief may be granted only if the application is filed "within six months after the arrangement is confirmed" and even then only if

"it shall be made to appear that fraud was practiced in the procurement of such arrangement and that knowledge of such fraud has come to the petitioners since the confirmation of such arrangement." (emphasis added)

The emphasized portion of the statute makes clear that it was contemplated that the six months' period of limitation would run prior to discovery of the fraud -- and, indeed, that if the fraud is discovered prior to the period of limitation

(in other words, prior to the confirmation) a court is powerless to set aside the confirmation.

Professor Collier has expressed his concurrence in this construction of Section 786:

"An application under § 386 [11 U.S.C. § 786] * * * must be 'filed at any time within six months after an arrangement has been confirmed.' The making of the motion within the six months' period is an essential prerequisite. A motion made after the six months' period cannot be granted. The court has no power to extend the time within which the motion may be made * * *. The period of six months runs from the time the 'arrangement has been confirmed,' which means the date of the entry of the order of confirmation; it does not run from the date of the discovery of the fraud." Collier on Bankruptcy, 14th ed., ¶ 11.02[2], p. 648. [emphasis added]

The courts have recognized that, since the clear policy underlying Section 786 is the prompt and final disposition of bankruptcy matters, the six-months' limitation in Section 786 is a mandatory one, which deprives the court of any discretion to entertain tardy petitions for relief. See Sciowe v. Chase Manhattan Bank, 388 F.2d 874 (5th Cir. 1968); In re Graco, Inc., 267 F.Supp. 952, 955-56 (D.Conn. 1967). See also Whiteford Plastics Co. v. Chase National Bank, 179 F.2d 582 (2d Cir. 1952). The same policy had been recognized and enforced with respect to the former 11 U.S.C. § 31, the similar predecessor of Section 786. In re Leight & Co., 139 F.2d 313 (7th Cir. 1943).

The order of Judge Ryan dismissing the petition is affirmed.

William C. Corne
United States District Judge

Dated: New York, New York

December 1 , 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x

In the Matter of

Index No. 73 B 222

MEDICAL ANALYTICS, INC.,

NOTICE OF APPEAL

Debtor.

----- x

Notice is hereby given that MEDICAL ANALYTICSS,
INC., the debtor in the above-named action, appeals to
the United States Court of Appeals for the Second
Circuit from the annexed Order of the Hon. Judge Conner,
dismissing the petition in bankruptcy entered in this
action on December 1, 1975.

Dated: New York, New York
December 30, 1975

LANS FEINBERG & COHEN
Attorneys for Medical Analytics, Inc.
555 Madison Avenue
New York, New York 10022
(212) 421-0700

COPY RECEIVED

February 27 1976
MARCHALL, BRATTER, GREENE, ALLISON & TUCKER

By E. Quattrone

3:50 P.M.